

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8396 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHODABHAI KHIMABHAI MAKWANA

Versus

SUPERINTENDENT OF POLICE

Appearance:

MR KH BHAYA for Petitioners

MR DP JOHSI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/10/97

ORAL JUDGEMENT

1. Superintendent of Police, the respondent No.1 is present in person.

2. The petitioners were called for the interview for the posts of Unarmed Constables at Baroda by the respondent No.1. The result of the selection was declared on 5-9-1992. The petitioners were called upon to appear for the medical test and to execute and produce

an agreement and bond for the period of training. They have been intimated that their names are there in the select list.

3. The petitioners filed this special civil application and they have made a grievance that though their names are there in the select list but they have not been given the appointments. From the facts which have come on the record of this special civil application, it is no more in dispute that the petitioners No.2, 3 and 4 figured at Serial Nos. 67, 68 and 11 respectively in the merit list whereas the petitioner No.1 figured at Sr. No.8 in the waiting list.

4. The grievance of the petitioners is that the select list was operated only upto merit No.59 and the candidates whose names were there below No.59 were not given the appointments. Another grievance has been made that though the petitioner No.4 figured at Sr. No.11 in the merit list, but he has not been given the appointment, which is highly arbitrary and unjustified.

5. In reply to the special civil application, defence has been taken that the petitioner No.4 though figured at Sr. No.11 in the merit list but he did not turned up for the medical test and as such he was not given the appointment. So far as the other petitioners are concerned, defence has been taken that they stand at lower number in merits than 59 beyond which the appointments were not given and as such their grievance is wholly untenable and unjustified.

6. The learned counsel for the petitioners contended that the action of the respondents not to act beyond merit No.59 is highly arbitrary and unjustified as number of vacancies were available. It has next been contended that the petitioner No.4 is admittedly at Sr. No.11 and as such the respondents have no justification to debar him of his right of appointment. It has further been contended that it is incorrect to say on the part of the respondents that the petitioner No.4 has not appeared for the medical test.

7. On the other hand, the counsel for the respondents contended that the petitioners have no indefeasible right of appointment even if they have been empaneled. Only 59 posts were available in the District to be filled in and as such in order of merits, the candidates upto Sr. No.59 have been given the appointment. As the posts were not available the list could not be operated. So far as the case of the petitioner No.4 is concerned, the counsel for the

respondents very fairly conceded that his name has incorrectly been excluded from the appointment and he will be given the appointment within seven days.

8. In the rejoinder, the counsel for the petitioners submitted that the figure which has been given out of the available vacancies of the appointment is incorrect. So far as the petitioner No.4 is concerned, the counsel for the petitioners submitted that the respondents should be given the direction to give him all the salary for this period as well as the seniority etc..

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

10. The Superintendent of Police, the respondent No.1 is present in person and he has produced, for the perusal of this Court, the relevant record of the vacancies which were available at the relevant time for the posts of Unarmed Constables. From the record, it is clear that for the relevant selection i.e. the selection in question, 49 posts of Unarmed Constables and ten posts of Armed Constables were there. The select list has been prepared for the number exceeding these vacancies but only on this ground the petitioners cannot claim any right much less a legal or fundamental right to get the appointments. Only 59 posts were available and against those posts admittedly in order of merits the appointments have been made. It is no more *res integra* that the appointments can only be restricted in selection to the actual vacancies plus anticipated vacancies, but the appointments can not be given on the posts which have occurred in future. If it is done then it will violate Articles 14 and 16 of the Constitution. The appointments could have been restricted only to 59 posts and if any vacancies have arisen subsequently then those have to be filled in by fresh selection otherwise it will affect the fundamental right as conferred to all the eligible candidates under Articles 14 and 16 of the Constitution. From these facts, I am satisfied that the respondents have not acted arbitrarily in not giving the appointments to the candidates beyond merit list No.59. None of the legal or fundamental rights of the petitioners No. 1, 2 and 3 have been violated. Their numbers in the merit list were much lower than 59. It is also not the case of the petitioners that any candidate who is below in the merit number then them has been given the appointment.

11. Now I may deal with the case of the petitioner No.4. So far as the question of giving appointment to him is concerned, the respondents have fairly conceded to

the same. The counsel for the petitioners has prayed for giving him the salary for this period as well as continuation in service, seniority etc. I do not find any justification in the salary claim of the petitioner No.4. It is true that the petitioner No.4 has been illegally deprived of his appointment for all these years but it is also equally true that he has not worked on the post. In case such a direction is given then he will get the salary for the period during which he has not worked on the post. 'No work no pay' is a settled proposition of law and on this principle, the claim of the petitioner No.4 for the salary for this period is untenable. However, the seniority in the cadre concerned has to be given, as it is a case of direct recruitment on the basis of the merit number. The petitioner No.4 is at Sr. No.11 in the merit list and naturally he will get the seniority accordingly at sufficiently high number. Merely because of this delay in appointment for which he is not blameworthy, he cannot be denied his seniority.

12. In the result, this special civil application is partly allowed. So far as the claim of the petitioners No.1, 2 and 3 is concerned, the petition is dismissed. Rule discharged.

13. So far as the claim of the petitioner No.4 is concerned, it is allowed and direction is given to the respondent No.1 to give him the appointment on the post of Unarmed Constable within a period of seven days. However, the petitioner No.4 shall not be entitled to any salary for this period. This period shall be taken for counting his seniority, notional benefits and for pension etc.. The appointment of the petitioner No.4 shall be subject to all the service conditions to which the appointment made by direct recruitment is subjected. The special civil application and rule with respect to petitioner No.4 stand disposed of in the aforesaid terms with no order as to costs.

zgs/-